

IT 95-12  
Tax Type: INCOME TAX  
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE HEARINGS DIVISION  
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE	)
STATE OF ILLINOIS	) XXXXX
	) SS# XXXXX
v.	)
	) Mimi Brin
XXXXXX	) Administrative Law Judge
	)

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RECOMMENDATION FOR DISPOSITION

APPEARANCES: XXXXX, on their own behalf

SYNOPSIS: This matter is before this administrative tribunal as a result of a timely protest by XXXXX (hereinafter referred to as the "Taxpayers" or the "XXXXX") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to them on July 22, 1994. The basis of this Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that they had failed to file an Illinois income tax return for the year ending December 31, 1992 (hereinafter referred to as the "Tax Year"). The Notice assessed tax, various penalties and interest for income earned that year. The taxpayers contend that during the tax year, they were residents of the State of Texas, and, further that they earned no income from Illinois which would subject them to statutory filing mandates.

The XXXXX appeared on the date and at the time set, by proper notice, for the hearing. They submitted to me a copy of their 1992 Federal income tax return (Taxpayer Ex. No. 1) as well as copies of their 1992 W-2 Wage and Tax Statements (Taxpayer Ex. No. 2).

The issue before me is whether the XXXXX are subject to Illinois

income tax filing and reporting requirements for the tax year. As a result of the documents presented of record, it is my recommendation that the matter be resolved in taxpayers' favor.

FINDINGS OF FACT:

1. The Department issued a Notice of Deficiency to the taxpayers dated July 22, 1994. Dept. Ex. No. 1

2. The bases of the Notice were that the taxpayers failed to file an Illinois income tax return for the year ending December 31, 1992, and failed to timely pay the pertinent tax liability. Dept. Ex. No. 1

3. The Notice showed a tax and penalty amount of \$4,780. Dept. Ex. No. 1

4. Taxpayers were residents of the State of Texas for the tax year at issue. Taxpayers' Ex. No. 3, 4

CONCLUSIONS OF LAW: Although the taxpayers, at hearing, admitted that they moved to Illinois sometime in 1993, during the tax year ending December 31, 1992, taxpayers were residents of the State of Texas, as evidenced by their W-2 Wage and Tax Statements supplied to me. When totalled, the wages shown on these forms as earned by these taxpayers and as averred by the Department, are wages earned by them from their employment in Texas, with their employers recognizing taxpayers' Texas residency on the face of those documents. Further, the taxpayers provided me with a copy of their 1992 1040 U.S. Individual Income Tax Return which clearly carries a Texas address.

It is, therefore, my recommendation that the Notice of Deficiency herein be cancelled as these taxpayers have rebutted the prima facie correctness of the Department's Notice of Deficiency.

Mimi Brin  
Administrative Law Judge